

FM-2 (Contract)

Council District(s) All

Office of Law

Outside Legal Counsel

The Administration is requesting approval of a contract with Nelson Mullins Riley & Scarborough LLP to provide outside legal counsel with respect to an employment discrimination claim filed against the County. The contract commenced November 1, 2020 and continues until the date the County has expended \$25,000, unless approved by the Council. If approved, the contract will continue through October 31, 2021 and renew automatically for two additional 1-year periods with the option to extend the initial term or renewal term an additional 120 days. The contract does not specify a maximum compensation for the initial 1-year term. Compensation may not exceed \$1,200,000 for the entire 3-year and 4-month term, including the renewal and extension periods. See Exhibit A.

Fiscal Summary

Funding Source	Maximum Compensation	Notes
County ⁽¹⁾	\$ 1,200,000	⁽¹⁾ Self Insurance Fund.
State	--	⁽²⁾ Maximum compensation for the entire 3-year and 4-month term, including the renewal and extension periods. The contract does not specify a maximum compensation for the initial 1-year term.
Federal	--	
Other	--	
Total	<u>\$ 1,200,000</u> ⁽²⁾	

Analysis

The contractor will serve as legal counsel for the County in regard to an Equal Employment Opportunity Commission (EEOC) discrimination claim filed against the County before the Maryland Commission on Civil Rights. The contract provides that representation will include all matters preparatory to and including litigation at the Commission, any and all appeals, and any lawsuits and appeals that are filed in either federal or State court subsequent to the conclusion of litigation at the Commission. The contract further provides that the County will work cooperatively

with the contractor to provide the necessary information and materials, and the County will make business and technical decisions as it deems appropriate.

Legal services will be billed at blended hourly rates of \$400 for attorneys and \$175 for paralegals. The contract provides that the contractor will not bill the County for any work performed by law clerks and/or summer associates. The contract further provides that the contractor may bill the County for the following eligible expenses: certain court costs; reproduction costs; data housing costs (if engaged in electronic discovery); and delivery costs. The contract states that the contractor also will be reimbursed for the actual costs of certain travel expenses incurred, subject to pre-approval by the County. The contract also states that the County will not pay for postage, filing, long distance telephone calls, facsimile transmission, overnight courier services, computer research, or photocopying, unless agreed to in advance by the County Attorney.

The contract commenced November 1, 2020 and continues until the date the County has expended \$25,000, unless approved by the Council. If approved, the contract will continue through October 31, 2021 and renew automatically for two additional 1-year periods with the option to extend the initial term or renewal term an additional 120 days on the same terms and conditions, unless the County provides notice of non-renewal. The contract does not specify a maximum compensation for the initial 1-year term. Compensation may not exceed \$1,200,000 for the entire 3-year and 4-month term, including the renewal and extension periods. The County may terminate the agreement by providing 30 days prior written notice. The Office of Law estimates that the cost of services to be provided prior to Council approval will total less than \$10,000.

The Office requested that the proposed contract be designated as a noncompetitive 902(f) award secured in the best interest of the County due to the contractor's experienced employment discrimination attorneys. The Office advised that the County must seek outside legal representation because several of its employees are material witnesses in the case, resulting in a conflict of interest. The Office further advised that due to the need to file a quick response to the complaint (no later than January 7, 2021), it did not have sufficient time to solicit bids.

County Charter, Section 902(f), states that "when... [competitive] bidding is not appropriate, a contract shall be awarded only by competitive negotiations, unless such negotiations are not feasible. When neither competitive bidding nor competitive negotiations are feasible, contracts may be awarded by noncompetitive negotiations."

County Charter, Section 510 states “nothing in this article shall be construed as preventing the county executive, with the approval of the county council, from engaging the services for a temporary period of any attorney or attorneys for legal work of an extraordinary nature when the work to be done is of such character or magnitude as to require legal services in addition to those provided by the regular staff of the Office of Law.”

County Charter, Section 715, requires that “any contract must be approved by the County Council before it is executed if the contract is...for services for a term in excess of two years or involving the expenditure of more than \$25,000 per year....”

Executive Summary

The County has been sued for employment discrimination, in a matter currently pending before the Maryland Commission on Civil Rights, and several members of the Office of Law are material witnesses, resulting in a conflict of interest which requires the County to seek outside legal representation. Due to the need to quickly file a response to the complaint, there is insufficient time to seek bids. Nelson Mullins Riley & Scarborough LLP was selected because firm partners, Thurman W. Zollicoffer, Jr., a former City Solicitor for the Baltimore City Law Department, and Deborah St. Lawrence Thompson, a former Chief of the Labor and Employment Section for the Baltimore City Law Department, have extensive experience in handling defense of employment discrimination cases for local jurisdictions. The contract is retroactive to 11/1/20, and is for a term of 1 year with up to 2 one-year renewal terms, and a 120 day extension at the end of any term. Compensation is at the rate of \$400/hr for attorneys and \$175/hr for paralegals and will not exceed \$1,200,000.

Prepared by: Office of Law

MB-4 (Res. 142-20)**Council District(s) 6**

Mrs. Bevins (By Req.)

Department of Planning

**Endorsement – Martin State Airport/MARC Station/Surrounding Area –
Transit-Oriented Development**

Resolution 142-20 endorses the designation of the area surrounded by Martin State Airport and the Middle River MARC Train Station as a Transit-Oriented Development (TOD). See Exhibit A.

For an area to receive TOD designation, Section 7-101(m) of the Maryland Transportation Article requires the endorsement of the Secretary of Transportation (after considering a recommendation of the Smart Growth Subcabinet established under Section 9-1406 of the State Government Article) and the local governing authority. A Maryland TOD is a dense, mixed-use deliberately planned development within a one-half mile of a transit station designed to increase transit ridership. It includes residential, office, retail and/or other amenities integrated into a walkable, pedestrian-friendly neighborhood and should reduce auto dependency, increase pedestrian and bicycle trips, foster safer station areas, offer attractive public spaces, enhance public transportation ridership, and encourage revitalization and smart development patterns.

The Department advised that TOD designation is one way for local jurisdictions to gain access to tools for planning and development by the Maryland Department of Transportation (MDOT) and other State agencies, which include:

- Technical Assistance - Feasibility, planning, and market studies may be supported. Also, it may be possible for MDOT to assist in addressing accessibility concerns (transit and roadway access or bike/pedestrian connections) or with conducting pre-development activities.
- Discretionary Program Funding - Where discretionary programs are identified as appropriate to site development needs, MDOT may be able to assist with developing applications, conducting cost-benefit analyses, or providing letters of support. Some projects may also be allocated additional points by virtue of their designation (or proximity to transit) in competitions for State funding programs.

- **Financing Tools - TOD designation** is one way for local jurisdictions to gain access to more flexible terms in deploying Tax Increment Financing (TIF) to support TOD project outcomes. Special provisions associated with the designation make it possible for local jurisdictions to draw on a broader range of resources, including special revenues and support of the Maryland Economic Development Corporation to help finance TOD infrastructure.
- **Location of State Office Facilities -** A Governor's Executive Order regarding State offices and TOD was issued in 2009 and remains in effect. The order states that sites that are part of a designated TOD or are otherwise strongly supported by transit should be given preferential consideration in the decision-making process for siting State office facilities.

In the absence of other development incentive programs, a TOD designation confers upon a property certain benefits, including State eligibility for tax increment financing by Baltimore County, as well as County exemption from impact fees and surcharges. Because the proposed TOD designated area is located within a Maryland Opportunity Zone, all properties within it are already eligible for County exemption from impact fees/surcharges. The resolution notes that the Martin State Airport MARC Station TOD designation area encompasses the Aviation Station development proposal. A TIF proposal for this development project potentially would result in a significant fiscal impact to Baltimore County; however, the Department advised that details on such a proposal are not yet available for consideration as part of the TOD designation approval process, and that special taxes related to any such TIF arrangement would be based on tax assessments at that time rather than on now-current or prior assessments.

In November 2010, the County Council approved Bill 103-10, which designated the area in which the Owings Mills Metro Station is located as a TOD and established a TIF arrangement to provide for public infrastructure improvements on the Metro Centre at Owings Mills property. Subsequently, in December 2013, the County Council expanded the development district to include an additional parcel in the arrangement.

This resolution shall take effect from the date of its passage by the County Council, with copies to be sent to MDOT.

Executive Summary
Martin State Airport MARC Station TOD Designation
November 30, 2020

Baltimore County is seeking a Transit Oriented Development (TOD) designation for the Martin State Airport MARC Station by the Maryland Department of Transportation (MDOT). The area designated would encompass the existing station and land adjacent and in close proximity the station. The TOD designation signals the desire by the County and the State to encourage land use and development that would support the use of transit at the Martin State Airport MARC station. The benefits of successful development oriented towards a transit station include increased transit ridership, which creates broader transportation network efficiencies and reduces congestion, and promotes community safety, convenience and economic development objectives. Reduced congestion augments land use and environmental conservation efforts by helping minimize air and water quality impacts, and enhancing accessibility to jobs, housing and other destinations for all residents.

The TOD designation by MDOT would provide access to tools for planning and development by MDOT and other state agencies. These tools from the state can help accelerate the development and begin to provide benefits to the businesses and citizens of Baltimore County. The types of state assistance may include:

- Technical Assistance - Feasibility, Planning, and Market Studies may be supported. Also, it may be possible for MDOT to assist in addressing accessibility concerns (transit and roadway access or bike/ped connections) or with conducting pre-development activities.
- Discretionary Program Funding - Where discretionary programs are identified as appropriate to site development needs, MDOT may be able to assist with developing applications, conducting cost-benefit analyses, or providing letters of support. Some projects may also be allocated additional points by virtue of their designation (or proximity to transit) in competitions for state funding programs.
- Financing Tools - TOD designation is one way for local jurisdiction to gain access to more flexible terms in deploying Tax Increment Finance (TIF) to support TOD project outcomes. Special provisions associated with the Designation make it possible for local jurisdictions to draw on a broader range of resources, including special revenues and support of the Maryland Economic Development Corporation to help finance TOD infrastructure.
- Location of State Office Facilities - A Governor's Executive Order regarding state offices and TOD was issued in 2009 and remains in effect. The order states that sites that are part of a designated TOD or are otherwise strongly supported by transit should be given preferential consideration in the decision-making process for siting state office facilities.

Prepared by: Department of Planning